

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date January 19, 2005

Division County Attorney

AGENDA ITEM WORDING

Approval of resolution authorizing payment of reasonable attorney's fees and costs for County officers and employees who are sued for certain actions or omissions arising out of their official duties when the County Attorney's office is unable to represent that officer or employee.

ITEM BACKGROUND

The County Attorney's office is charged by ordinance with representing County officers and employees sued for most actions or omissions arising out of their official duties.

Whenever an employee is named as a defendant in addition to the County, the potential for a conflict of interest exists that might prevent the County Attorney's office from representing both the County and the named individual. In such limited circumstances, the resolution would authorize the payment of reasonable attorney's fees and costs incurred by the employee should the employee have to seek his or her own attorney. That rate would be measured against the reasonable prevailing rate for similar services provided in Monroe County.

Section 111.07 of Florida Statutes authorizes local governments to pay for such attorney's fees but does not require payment unless the employee prevails.

PREVIOUS RELEVANT BOCC ACTION

CONTRACT/AGREEMENT CHANGES

STAFF RECOMMENDATIONS

TOTAL COST	BUDGETED	Yes	No
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COST TO COUNTY	SOURCE OF FUNDS
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APPROVED BY: County Attorney ■ OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

 01/05/05
JOHN R. COLLINS

DOCUMENTATION: Included

AGENDA ITEM # R 4

RESOLUTION NO. -2005

A RESOLUTION AUTHORIZING THE PAYMENT OF REASONABLE ATTORNEY'S FEES FOR REPRESENTATION OF COUNTY OFFICERS AND EMPLOYEES SUED FOR ACTIONS TAKEN IN THE COURSE AND SCOPE OF THEIR DUTIES WHEN THE OFFICE OF THE COUNTY ATTORNEY CANNOT PROVIDE REPRESENTATION.

WHEREAS, the Office of the County Attorney is authorized by Section 2-358(a)(5) of the Monroe County Code to defend all current and former County officers and employees in their personal and official capacities, against any non-criminal action, arising out of acts or omissions undertaken or omitted in the course of the performance of County business, and

WHEREAS, the potential for a conflict of interest exists when a County officer or employee is named as a co-defendant or co-respondent with the Board of County Commissioners and/or any other County officer or employee, which might preclude the Office of the County Attorney from representing both parties in the litigation; and

WHEREAS, the Rules of Professional Conduct regulating the practice of law in Florida places conditions and limits on the dual representation of two or more clients when a potential conflict exists between the clients; and

WHEREAS, Section 111.07 of Florida Statutes authorizes the County to provide an attorney to defend an officer or employee in any civil action arising from a complaint for damages or other injury suffered as a result of any act or omission arising out of and in the scope of his or her duties except for those acts undertaken in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

NOW THEREFORE; BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT

Section 1. In the event that the Board, the County Attorney, or a court of competent jurisdiction determines that the Office of County Attorney is precluded by the Rules of Professional Conduct from defending a County officer or employee in a civil action arising out of an act or omission in the course of performing County duties or employment, that the Board of County Commissioners will pay reasonable attorney's fees and costs incurred by the employee in defense of that action within the limits set forth in F.S. 111.07 and as otherwise set forth herein.

Section 2. When the Office of the County Attorney is precluded from representing the officer or employee due to a potential or actual conflict of interest, the employee shall retain an attorney of his or her choice. Any and all fees and costs determined by the Board or a court of competent jurisdiction to be in excess of the reasonable prevailing rate for similar services provided by attorneys practicing within Monroe County, Florida, shall be the sole responsibility of the officer or employee who retained that attorney or incurred those costs.

Section 3. The Board shall not be liable for any fees and costs that are incurred by an officer or employee when the Rules of Professional Conduct do not prohibit representation of the officer or employee by the Office of County Attorney unless the Board consents prior to the engagement of that attorney.

Section 4. Any attorney's fees paid from County funds on behalf of an officer or employee who is found to be personally liable by virtue of acting outside the scope of his or her employment or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the County in a civil action against the officer or employee.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 19th day of January, 2005.

Mayor Spehar
Mayor Pro Tem McCoy
Commissioner Nelson
Commissioner Neugent
Commissioner Rice

(SEAL)

Attest: DANNY L.KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairperson

jrescay

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Robert B. Shillinger, Jr.
ROBERT B. SHILLINGER, JR.
ASSISTANT COUNTY ATTORNEY

Date 1-5-5